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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120822383-3277-02]

RIN 0648-BC48

Fisheries of the Northeastern United States; Northeast Multispecies Fishery Management Plan; Amendment 19

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements Amendment 19 to the Northeast Multispecies Fishery Management Plan. The New England Fishery Management Council developed Amendment 19 to modify management measures that currently govern the small-mesh multispecies fishery, including the accountability measures, the year-round possession limits, and total allowable landings process. Amendment 19 was approved by NMFS on January 15, 2013.

DATES: Effective [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: An environmental assessment (EA) was prepared for Amendment 19 that describes the proposed action and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 19, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from the New

England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281-9218.

SUPPLEMENTARY INFORMATION:

Background

The small-mesh multispecies complex is composed of five stocks of three species of hakes (northern silver hake, southern silver hake, northern red hake, southern red hake, and offshore hake), and the fishery is managed through a series of exemptions from the other provisions of the Northeast (NE) Multispecies Fishery Management Plan (FMP). None of the small-mesh multispecies stocks are overfished, and overfishing is not occurring. Amendment 19 to the FMP was initiated by the New England Fishery Management Council (Council) in 2009 to establish a mechanism for specifying annual catch limits (ACLs) and accountability measures (AMs) for the small-mesh multispecies fishery, as required by the 2007 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). However, the Council postponed developing the amendment in order to include the results of an updated stock assessment in November 2010. Due to this delay, and in order to bring the small-mesh multispecies portion of the NE Multispecies FMP into compliance with the Magnuson-Stevens Act requirements for ACLs and AMs, NMFS implemented a Secretarial Amendment in time for the start of the 2012 fishing year (March 30, 2012; 77 FR 19138).

The Secretarial Amendment was based on the preliminary work the Council had done on Amendment 19 up to that point, including the overfishing limits (OFL), acceptable biological catches (ABC), and ACLs. The Council, through Amendment 19, is adopting those limits (Table

1), as well as the process that describes how those values are calculated, as was implemented in the Secretarial Amendment. As described in the Secretarial Amendment, the ABCs are based on the OFLs and, to account for scientific uncertainty, are set equal to the 40th percentile of the OFL distribution for both red hake stocks, and the 25th percentile for both silver hake stocks.

Offshore hake, which does not have an overfishing definition, are caught incidentally in the southern silver hake fishery and are marketed together with silver hake as “whiting.” In order to account for offshore hake, the southern silver hake ABC is increased by 4 percent, which is the average amount of offshore hake landed on a typical “whiting” trip, based on information presented during the most recent stock assessment. It is not feasible for fishermen to separate silver and offshore hake on a given trip, and there is not enough information to establish a distinct set of offshore hake catch limits. Therefore, this combined ABC, ACL, and TAL in the southern whiting fishery is deemed adequate to account for and manage the southern silver hake and offshore hake stocks. This combined fishery is referred throughout this rule as “southern whiting.”

The ACLs are set equal to 95 percent of the respective ABC, to account for management uncertainty. This process was recommended by the SSC.

Table 1: OFL, ABC, and ACL for 2012-2014

	Northern Red Hake	Northern Silver Hake	Southern Red Hake	Southern Whiting
Overfishing Limit (OFL)	314 mt	24,840 mt	3,448 mt	62,301 mt
Acceptable Biological Catch (ABC)	280 mt	13,177 mt	3,259 mt	33,940 mt
Annual Catch Limit (ACL)	266 mt	12,518 mt	3,096 mt	32,295 mt

Amendment 19 changes some of the other measures implemented in the Secretarial Amendment, as well as management measures that the Secretarial Amendment did not address. A full description of the justifications and rationale behind each measure being implemented in

this final rule was included in the proposed rule published on November 2, 2012 (77 FR 66169) and is not repeated here.

Final Measures

1. Revised Overfishing Definitions

The overfishing definitions were derived from the most recent stock assessment for the small-mesh multispecies that was conducted in November 2010 (SAW 51). There is no overfishing definition for offshore hake because there is insufficient information for a stock assessment. SAW 51 concluded that the existing biological reference points should be rejected and could not recommend an alternative. Therefore, this action removes the overfishing definition for offshore hake implemented in Amendment 12 until such time that the best available scientific information provides an acceptable overfishing definition for this stock. In the meantime, offshore hake will be accounted for in the southern silver hake fishery, because it is caught in conjunction with and cannot be separated from silver hake. This approach to managing the offshore hake fishery was recommended by the Council's Scientific and Statistical Committee (SSC) and is considered consistent with National Standard 1 for a stock in a stock complex for which it is not possible to calculate reference points.

The new overfishing definitions for red hake and silver hake are as follows:

Red Hake

Red hake is overfished when the 3-yr moving average of the spring survey weight per tow (i.e., the biomass threshold) is less than one-half of the biomass at maximum sustainable yield (B_{MSY} proxy), where the B_{MSY} proxy is defined as the average observed biomass from 1980–2010. The current estimates of the biomass thresholds for the northern and southern stocks are 1.27 kg/tow and 0.51 kg/tow, respectively.

Overfishing occurs when the ratio between the catch and spring survey biomass exceeds 0.163 kt/kg and 3.038 kt/kg, respectively, derived from An Index Method (AIM) analyses from 1980-2009.

Silver Hake

Silver hake is overfished when the 3-yr moving average of the fall survey weight per tow is less than one-half the B_{MSY} proxy, where the B_{MSY} proxy is defined as the average observed biomass from 1973-1982. The most recent estimates of the biomass thresholds are 3.21 kg/tow for the northern stock and 0.83 kg/tow for the southern stock.

Overfishing occurs when the ratio between the catch and the arithmetic fall survey biomass index from the most recent 3 yr exceeds the overfishing threshold. The most recent estimates of the overfishing thresholds are 2.78 kt/kg for the northern stock and 34.19 kt/kg for the southern stock.

2. Adjustments to the Specifications Process and Frameworkable Measures, and Monitoring Procedures and Requirements

Amendment 19 modifies the specifications process and the list of frameworkable measures implemented by the Secretarial Amendment, as well as the process by which the fishery is monitored. The specifications process instructs the Council as to when it needs to make a recommendation on the catch limits, possession limits, and other measures deemed to be part of the specifications package. In addition, the list of items that may be considered for adjustment in a framework is modified slightly.

This final rule also implements a measure that requires NMFS to prepare, and the appropriate Council technical group (such as a plan development team (PDT)) to review, a report on the small-mesh multispecies fishery, including trends in the fishery and changes in stock size.

The PDT or other appropriate Council technical group would be responsible for making recommendations to the Council, should any management changes be deemed necessary.

Finally, this final rule requires vessels fishing for small-mesh multispecies to send their vessel trip reports (VTR) to NMFS on a weekly basis. Amendment 16 to the NE Multispecies FMP implemented the requirement that vessels fishing with a NE multispecies permit have a weekly VTR requirement; however, that amendment had no other small-mesh multispecies measures associated with it. As a result, the Council and the Whiting Oversight Committee wanted to ensure through this action it is clear that the weekly submission of VTRs is required for small-mesh multispecies vessels, in order to facilitate more effective monitoring of the stock-area based total allowable landings (TALs.)

3. Stock Area Total Allowable Landings

The Secretarial Amendment implemented annual, stock-wide TALs for northern and southern red hake, as well as for northern silver hake and southern whiting. The TALs are calculated by deducting the most recent 3-yr moving average of discards from the ACL, and then deducting an additional 3 percent to account for state-waters landings.

Table 2: 2012-2014 Total Allowable Landings

	Northern Red Hake	Northern Silver Hake	Southern Red Hake	Southern Whiting
ACL	266 mt	12,518 mt	3,096 mt	32,295 mt
Discard Estimate (2008-2010)	65% (173 mt)	26% (3,255 mt)	56% (1,718 mt)	13% (4,198 mt)
State-Waters Landings (3%)	2.8 mt	278 mt	42 mt	842 mt
Federal TAL (mt)	90.3 mt	8,985 mt	1,336 mt	27,255 mt
Federal TAL (lb)	199,077.4 lb	19,809,243 lb	2,945,376 lb	60,086,990 lb

Amendment 19 maintains an annual, stock-wide TAL for the northern area. In the southern stock area, however, the TALs will be monitored annually initially, until two-thirds of a TAL is harvested in a given year. If landings in a given year exceed two-thirds of the TAL,

NMFS would consult with the Council during the following year, and, if the Council agrees, NMFS would implement a rule to switch the TAL to a quarterly system for the next year. That is, if two-thirds of the red hake TAL were landed in 2013, and the Council agreed, quarterly TALs would be implemented for the start of the 2015 fishing year and would be maintained until the Council chooses, through specifications or a Framework Adjustment, to revert back to an annual TAL. The incidental possession limit trigger (as described in the in-season AM section, below) would be applied for each quarter. The quarterly allocations would be based on the average proportion of dealer-reported landings from 2008-2010, as follows:

Table 3: Quarterly Allocations for the Southern Stock Area

	May – Jul	Aug – Oct	Nov – Jan	Feb - Apr
Southern Red Hake	33.3%	25.3%	17.7%	23.7%
Southern Whiting	27%	21.4%	22.8%	28.8%

Included in this measure is a "roll-up" procedure that would be used for in-season monitoring of the quarterly TALs. In each quarter, the cumulative landings to date that fishing year would be monitored against a quarterly TAL represented by the sum of that quarter's allocation, plus the allocations from prior quarters (e.g., during quarter 2, the cumulative landings of southern red hake to date would be monitored against a quota equal to 58.6 percent of the annual TAL, which is the sum of the quarter 1 allocation of 33.3 percent plus the quarter 2 allocation of 25.3 percent). The possession limit trigger for each stock would apply in each quarter, and the incidental possession limit would remain in effect until the end of that quarter. At the start of the next quarter, the possession limit would reset to the appropriate default possession limit. This procedure allows for unused quota from a quarter to be available immediately to the fleet, without unnecessary delays from rulemaking to formally transfer quota between quarters.

4. Accountability Measures

The Secretarial Amendment implemented two types of AMs for the small-mesh multispecies fishery. The in-season AM would reduce the possession limit to an incidental amount for a stock if 90 percent of that stock's TAL is projected to be harvested. For both red hake stocks, the possession limit would be reduced to 400 lb (181 kg), and for northern silver hake and southern whiting, the possession limit would be reduced to 1,000 lb (454 kg). In the event that an ACL is exceeded in a given year, the post-season AM implemented in the Secretarial Amendment would reduce a subsequent year's ACL by the exact amount, by weight, by which the ACL was exceeded.

In-Season AMs

This final rule maintains the overall structure of the in-season AM (i.e., the 90-percent trigger, with a reduced possession limit), but changes the incidental possession limit for northern silver hake and southern whiting from 1,000 lb (454 kg) to 2,000 lb (907 kg), while maintaining the 400-lb (181-kg) incidental possession limit for both stocks of red hake.

Post-Season AM

This final rule replaces the post-season AM implemented by the Secretarial Amendment with one that would decrease the TAL trigger by the same percentage by which the ACL is exceeded. That is, if an ACL is exceeded by 5 percent in fishing year 2013, the incidental possession limit trigger starting in fishing year 2015 would be reduced to 85 percent. An ACL overage that occurred in fishing year 2012 would be subject to this AM, which would be applied to the 2014 fishing year.

This reduction in the TAL trigger would remain in effect until the Council chooses to modify it through the specifications process or in a framework adjustment.

5. Trip Limits

This final rule implements a 5,000-lb (2,268-kg) trip limit for red hake in both the northern and southern stock areas for all gear types. This final rule also increases the southern whiting trip limit from 30,000 lb (13,608 kg) to 40,000 lb (18,144 kg) for vessels fishing in the Southern New England and Mid-Atlantic Exemption Areas using mesh that is 3 inches (7.62 cm) or greater.

Other Regulatory Changes

This final rule also clarifies some of the regulations governing the small-mesh multispecies fishery. The language of the regulations pertaining to the small-mesh multispecies exemption programs were unclear as to what gear was allowed in these programs. This final rule clarifies the regulatory language so that it is clear that only a raised footrope trawl is allowed in the Small Mesh Area I and II Exemption Programs and the Gulf of Maine Grate Raised Footrope Trawl Area Exemption Program, and that no other fishing gears may be used while a vessel is fishing in these exemption programs. The regulations are further clarified with the citation for each of the incidental catch limits for other species in the small-mesh multispecies exemption programs. An incorrect citation in the regulations pertaining to small-mesh multispecies transfers-at-sea is also corrected in this rule.

The proposed rule incorrectly referenced northern silver hake and southern whiting instead of northern and southern red hake in the proposed changes to 50 CFR 648.90(b)(2)(i)(C)(1). The regulations in this final rule correct that error.

Public Comments

NMFS only received two comments to the proposed action. Neither of these comments resulted in a change to the final rule.

Comments: A comment on the Notice of Availability (October 19, 2012; 77 FR 64303) recommended that NMFS set the quotas to zero for all of the small-mesh multispecies stocks. A comment was received on the proposed rule stating that the rule would allow overfishing to continue.

Response: Neither of these commenters presented credible evidence in support of their claim. The quotas were developed using the best available science, which also indicates that overfishing is not occurring on any of the small-mesh multispecies stocks. In addition, none of the small-mesh multispecies stocks are overfished. The quotas implemented by this final rule are consistent with scientific advice and do not allow for overfishing.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), this final rule includes a Final Regulatory Flexibility Analysis (FRFA) in support of Amendment 19 analyzing the rule's impact on small entities. This FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, relevant analyses in the Amendment and its EA, and a summary of the analyses completed to support the action implemented through this rule. A copy of the analyses done in the Amendment and EA is available from the Council (see ADDRESSES). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why

this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Two comments were received on the proposed rule and the amendment. However, neither addressed the IRFA or economic analysis contained in Amendment 19, and neither resulted in any changes to the rule.

Description and Estimate of Number of Small Entities to Which the Final Rule Will Apply

This rule affects those vessels and vessel owners that fish for small-mesh multispecies in the northeast Atlantic Ocean. The Small Business Administration (SBA) considers commercial fishing entities (NAICS code 114111) to be small entities if they have no more than \$4 million in annual sales, while the size standard for charter/party operators (part of NAICS cod 487210) is \$7 million in sales. The participants in the commercial small-mesh multispecies fishery are those vessels issued limited or open access NE multispecies permits that land any of the small-mesh multispecies. Because any vessel at any time may be issued an open access NE multispecies permit, it is difficult to determine how many vessels or owners will participate in this fishery in a given year. Also, because some firms own more than one vessel, available data make it difficult to reliably identify ownership control over more than one vessel. For this analysis, the number of vessels landing at least 1 lb (0.45 kg) of any of the small-mesh multispecies (red hake, silver hake, or offshore hake) is considered to be a maximum estimate of the number of small business entities. The average number of permitted vessels landing at least 1 lb (0.45 kg) of small-mesh multispecies from 2005-2010 was 562 vessels per year. All of the

entities (fishing vessels) affected by this action are considered small entities under the SBA size standards for small fishing businesses (\$4.0 million in annual gross sales). Therefore, there are no disproportionate effects on small versus large entities.

Information on costs in the fishery is not readily available, and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability. In general, the economic impacts from the measures implemented in Amendment 19 are neutral. There may be slightly negative impacts if the in-season or post-season AMs are triggered. The AMs would reduce the amount of fish available to the fleet, which in turn would reduce vessel revenues. On the other hand, there are likely to be positive long-term impacts on the fishery, as these measures are intended to ensure the sustainable harvesting of the small-mesh multispecies stocks. Further, other measures implemented by Amendment 19 are likely to have positive economic impacts, specifically increasing the incidental trip limit for northern silver hake and southern whiting should the in-season AM be triggered, and increasing the southern whiting trip limit for vessels using mesh that is 3 in (7.62 cm) or greater. The implementation of a trip limit for red hake is likely to have neutral impacts, as the intent of the trip limit is to cap landings at approximately the current level and discourage sudden increases in catch.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no compliance requirements associated with this final rule. The rule clarifies the requirement that vessels landing small-mesh multispecies must submit their VTRs on a weekly basis, but this is not a new requirement. This final rule contains reporting and recordkeeping requirements and associated information collections subject to the Paperwork Reduction Act that have been previously approved by OMB under control number 0648-0212.

This final rule does not duplicate, overlap, or conflict with other Federal rules.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

The management measures implemented in Amendment 19 were developed to improve the overall management of the small-mesh multispecies fishery. None of the measures being implemented in Amendment 19 reduces fishing opportunities or flexibility. These measures promote efficiency within the fishery by increasing trip limits or reduce waste associated with regulatory discards by establishing incidental and year-round possession limits that take into account the existing behavior of the fleet and setting the possession limits at or above the current, market-driven level.

Therefore, by implementing management measures that provide flexibility and efficiency and reduce waste, NMFS has taken the steps necessary to minimize the impacts of this action on small entities consistent with the stated objectives of applicable statutes.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of

permits for the Northeast multispecies fishery. The guide and this final rule will be available upon request, and posted on the Northeast Regional Office's website at www.nero.noaa.gov.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 29, 2013.

Alan D. Risenhoover, Director, Office of Sustainable Fisheries,
performing the functions and duties of the Deputy Assistant Administrator
for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.7, paragraph (f)(2)(i) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(2) Fishing vessel log reports. (i) For any vessel not issued a NE multispecies permit, Atlantic herring permit, or Tier 3 Limited Access mackerel permit, fishing vessel log reports,

required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS within 15 days after the end of the reporting month. If no fishing trip is made during a particular month for such a vessel, a report stating so must be submitted, as instructed by the Regional Administrator. For any vessel issued a NE multispecies permit, including vessels fishing for small-mesh multispecies or whiting, an Atlantic herring permit, or a Tier 3 Limited Access mackerel permit, fishing vessel log reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. If no fishing trip is made during a reporting week for such a vessel, a report stating so must be submitted and received by NMFS by midnight of the first Tuesday following the end of the reporting week, as instructed by the Regional Administrator. For the purposes of this paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month that the VTR must be submitted to NMFS, as appropriate. Any fishing activity during a particular reporting week (i.e., starting a trip, landing, or offloading catch) will constitute fishing during that reporting week and will eliminate the need to submit a negative fishing report to NMFS for that reporting week. For example, if a vessel issued a NE multispecies permit, Atlantic herring permit, or Tier 3 Limited Access Mackerel Vessel begins a fishing trip on Wednesday, but returns to port and offloads its catch on the following Thursday (i.e., after a trip lasting 8 days), the VTR for the fishing trip would need to be submitted by midnight Tuesday of the third week, but a negative report (i.e., a “did not fish” report) would not be required for either earlier week.

* * * * *

3. In § 648.13, paragraph (e) is revised to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(e) Vessels issued a letter of authorization from the Regional Administrator to transfer small-mesh multispecies at sea for use as bait will automatically have 500 lb (226.8 kg) deducted from the vessel's combined silver hake and offshore hake possession limit, as specified under § 648.86(d), for every trip during the participation period specified on the letter of authorization, regardless of whether a transfer of small-mesh multispecies at sea occurred or whether the actual amount that was transferred was less than 500 lb (226.8 kg). This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

* * * * *

4. In § 648.80, paragraphs (a)(6)(i)(B), (a)(6)(i)(F), (a)(9)(i)(A), (a)(9)(ii), (a)(15)(i)(B), (a)(16)(i)(A), and (a)(16)(ii)(A) are revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

(a) * * *

(6) * * *

(i) * * *

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Atlantic herring, up to the amount specified in § 648.204; longhorn sculpin; squid, butterfish, and Atlantic mackerel, up to the amounts specified in § 648.26; spiny dogfish, up to the amount specified in § 648.235; red hake, up to the amount specified in § 648.86(d), monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by

weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

* * * * *

(F) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the more restrictive gear, possession limit, and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization and consistent with paragraph (a)(15)(i)(G) of this section. For example, a vessel may fish in both the Cultivator Shoal Whiting Fishery Exemption Area and the Southern New England or Mid-Atlantic Exemption Areas, and would be restricted to a minimum mesh size of 3 in (7.62 cm) and a maximum trip limit of 30,000 lb (13,607.77 kg) for silver hake and offshore hake, combined, as required in the Cultivator Shoal Whiting Fishery Exemption Area.

* * * * *

(9) Small Mesh Area 1/Small Mesh Area 2 —(i) Description. (A) Unless otherwise prohibited in §648.81, a vessel subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(5)(ii) or (a)(9)(ii) of this section, and § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1; and from January 1 through June 30, when fishing in Small Mesh Area 2. While lawfully fishing in these areas with mesh smaller than the minimum size, an owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake, combined, and red hake—up to the amounts specified

in § 648.86(d); butterfish, Atlantic mackerel, squid, up to the amounts specified in § 648.26; spiny dogfish, up to the amount specified in § 648.235; Atlantic herring, up to the amount specified in § 648.204; and scup, up to the amount specified in § 648.128.

* * * * *

(ii) Raised footrope trawl. Vessels fishing in the Small Mesh Areas I and II Exemption Programs described in §648.80(a)(9)) must configure the vessel's gear with a raised footrope trawl, configured in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(9)(ii)(A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

* * * * *

(15) * * *

(i) * * *

(B) All nets must be no smaller than a minimum mesh size of 2.5-in (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(15)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than silver hake, offshore hake, and red hake, subject to the applicable possession limits as specified in § 648.86(d), except for the following allowable incidental species: Butterfish, Atlantic mackerel, and squid, up to the amounts specified in § 648.26; scup, up to the amount specified in § 648.128; spiny dogfish, up to the amount specified in § 648.235, and Atlantic herring, up to the amount specified in § 648.204.

* * * * *

(16) * * *

(i) Mesh requirements and possession restrictions. (A) All nets must comply with a minimum mesh size of 2.5-in (6.35-cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(16)(i)(B) of this section. An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may not fish for, possess on board, or land any species of fish, other than silver hake and offshore hake, subject to the applicable possession limits as specified in paragraph (a)(16)(i)(C) of this section, and red hake, subject to the possession limit specified in § 648.86, except for the following allowable incidental species: Butterfish, Atlantic mackerel, and squid, up to the amounts specified in § 648.26; Atlantic herring, up to the amount specified in § 648.204; and alewife.

* * * * *

(ii) * * *

(A) An owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's gear with a raised footrope trawl as specified in paragraphs (a)(9)(ii)(A) through (C) of this section. In addition, the restrictions specified in paragraphs (a)(16)(ii)(B) and (C) of this section apply to vessels fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.

* * * * *

5. In § 648.86, paragraphs (d)(1)(i) introductory text, (d)(1)(ii) introductory text, (d)(1)(iii) introductory text, and (d)(4)(ii) are revised to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(d) * * *

(1) * * *

(i) Vessels possessing on board or using nets of mesh size smaller than 2.5 in (6.35 cm).

Owners or operators of a vessel may possess and land not more than 5,000 lb (2,268 kg) of red hake, and not more than 3,500 lb (1,588 kg) of combined silver hake and offshore hake, if either of the following conditions apply:

* * * * *

(ii) Vessels possessing on board or using nets of mesh size equal to or greater than 2.5 in (6.35 cm) but less than 3 in (7.62 cm). Owners or operators of a vessel that is not subject to the possession limit specified in paragraph (d)(1)(i) of this section may possess and land not more than 5,000 lb (2,268 kg) of red hake, and not more than 7,500 lb (3,402 kg) of combined silver hake and offshore hake if either of the following conditions apply:

* * * * *

(iii) Vessels possessing on board or using nets of mesh size equal to or greater than 3 in (7.62 cm). An owner or operator of a vessel that is not subject to the possession limits specified in paragraphs (d)(1)(i) and (ii) of this section may possess and land not more than 5,000 lb (2,268 kg) of red hake, and not more than 30,000 lb (13,608 kg) of combined silver hake and offshore hake when fishing in the Gulf of Maine or Georges Bank Exemption Areas, as described in § 648.80(a), and not more than 40,000 lb (18,144 kg) of combined silver hake and offshore hake when fishing in the Southern New England or Mid-Atlantic Exemption Areas, as described in §§ 648.80(b)(10) and 648.80(c)(5), respectively, if both of the following conditions apply:

* * * * *

(4) * * *

(ii) Silver hake and offshore hake. If a possession limit reduction is needed for a stock area, the incidental possession limit for silver hake and offshore hake, combined, in that stock area will be 2,000 lb (907 kg) for the remainder of the fishing year.

* * * * *

6. In § 648.90, paragraphs (b)(1) introductory text, (b)(1)(i) through (iii), (b)(1)(iv)(A), (b)(2) introductory text, (b)(2)(i)(C), (b)(2)(ii)(C), (b)(3), (b)(4), (b)(5)(ii), and (c)(1) are revised to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(b) Small-mesh multispecies —(1) Three-year specifications process, annual review, and specifications package. The Council shall specify on at least a 3-year basis the OFL, ABC, ACLs, and TALs for each small-mesh multispecies stock in accordance with the following process.

(i) At least every 3 years, based on the annual review, described below in paragraph (b)(3) of this section, and/or the specifications package, described in paragraph (b)(4) of this section, recommendations for ABC from the SSC, and any other relevant information, the Whiting PDT shall recommend to the Whiting Oversight Committee and Council specifications including the OFL, ABC, ACL, and TAL for each small-mesh multispecies stock for a period of at least 3 years. The Whiting PDT and the Council shall follow the process in paragraph (b)(2) of this section for setting these specifications.

(ii) The Whiting PDT, after reviewing the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded, as well as changes to the appropriate specifications.

(iii) Taking into account the annual review and/or specifications package described in paragraphs (b)(2) and (b)(4), respectively, of this section, the advice of the SSC, and any other relevant information, the Whiting PDT may also recommend to the Whiting Oversight Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of small-mesh multispecies. These adjustments may be included in the Council's specifications for the small-mesh multispecies fishery.

(iv) Council recommendation. (A) The Council shall review the recommendations of the Whiting PDT, Whiting Oversight Committee, and SSC, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded.

* * * * *

(2) Process for specifying ABCs, ACLs, and TALs. The Whiting PDT shall calculate the OFL and ABC values for each small-mesh multispecies stock based on the control rules established in the FMP. These calculations shall be reviewed by the SSC, guided by terms of reference developed by the Council. The ACLs and TALs shall be calculated based on the SSC's approved ABCs, as specified in paragraphs (a)(2)(i)(A) through (C), and (a)(2)(ii)(A) through (C) of this section.

(i) * * *

(C) TALs. (1) The red hake TALs are equal to the northern red hake and southern red hake ACLs minus a discard estimate based on the most recent 3 years of data and then reduced by 3 percent to account for silver hake and offshore hake landings that occur in state waters.

(2) If more than two-thirds of the southern red hake TAL is harvested in a single year, the Regional Administrator shall consult with the Council and will consider implementing quarterly TALs in the following fishing year, as proscribed in the FMP and in a manner consistent with the requirements of the Administrative Procedure Act.

* * * * *

(ii) * * *

(C) TALs. (1) The northern silver hake and southern whiting TALs are equal to the northern silver hake and southern whiting ACLs minus a discard estimate based on the most recent 3 years of data and then reduced by 3 percent to account for silver hake and offshore hake landings that occur in state waters.

(2) If more than two-thirds of the southern whiting TAL is harvested in a single year, the Regional Administrator shall consult with the Council and will consider implementing quarterly TALs in the following fishing year, as proscribed in the FMP and in a manner consistent with the requirements of the Administrative Procedure Act.

* * * * *

(3) Annual Review. (i) Using a report provided by NMFS that includes trends in the fishery, changes in stock biomass, and total catch data, the Whiting PDT shall meet at least once annually to review the status of the stock and the fishery and the adequacy of the 3-year specifications. Based on such review, the PDT shall provide a report to the Council on any changes or new information about the small-mesh multispecies stocks and/or fishery, and it shall

recommend whether the specifications for the upcoming year(s), established pursuant to paragraph (b)(1) of this section, need to be modified. At a minimum, this review should include a review of at least the following data, if available: Commercial catch data; discards; stock status (exploitation rate and survey biomass); sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of small-mesh multispecies; and any other relevant information.

(ii) If new and/or additional information becomes available, the Whiting PDT shall consider it during this annual review. Based on this review, the Whiting PDT shall provide guidance to the Whiting Oversight Committee and the Council regarding the need to adjust measures for the small-mesh multispecies fishery to better achieve the FMP's objectives. After considering this guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the process specified in paragraph (c) of this section, or through an amendment to the FMP.

(4) Specifications Package. (i) The Whiting PDT shall prepare a specification package, including a SAFE Report, at least every 3 years. Based on the specification package, the Whiting PDT shall develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 3 fishing years. The specifications package shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the small-mesh multispecies fishery. The specifications package shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(ii) In any year in which a specifications package, including a SAFE Report, is not completed by the Whiting PDT, the annual review process described in paragraph (a) of this section shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

(5) * * *

(ii) Post-season adjustment for an overage. If NMFS determines that a small-mesh multispecies ACL was exceeded in a given fishing year, the in-season accountability measure adjustment trigger, as specified in paragraph (b)(5)(i) of this section, shall be reduced in a subsequent fishing year by 1 percent for each 1 percent by which the ACL was exceeded through notification consistent with the Administrative Procedure Act. For example, if the in-season adjustment trigger is 90 percent, and an ACL is exceeded by 5 percent, the adjustment trigger for the stock whose ACL was exceeded would be reduced to 85 percent for subsequent fishing years.

* * * * *

(c) * * *

(1) Adjustment process. (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes; effort monitoring; data reporting; possession limits; gear restrictions; closed areas; permitting restrictions; crew limits; minimum fish sizes; onboard observers; minimum hook size and hook style; the use of crucifer in the hook-gear fishery; sector

requirements; recreational fishing measures; area closures and other appropriate measures to mitigate marine mammal entanglements and interactions; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the FMP.

(ii) The Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable); modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies; adjustments to whiting stock boundaries for management purposes; adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable); season adjustments; declarations; participation requirements for any of the Gulf of Maine/Georges Bank small-mesh multispecies exemption areas; OFL and ABC values; ACL, TAL, or TAL allocations, including the proportions used to allocate by season or area; small-mesh multispecies possession limits, including in-season AM possession limits; changes to reporting requirements and methods to monitor the fishery; and biological reference points, including selected reference time series, survey strata used to calculate biomass, and the selected survey for status determination.

(iii) Adjustment process for whiting DAS. The Council may develop recommendations for a whiting DAS effort reduction program through the framework process outlined in paragraph (c) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

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